IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4784 OF 1993

B A B Agro Limited .. Petitioner

Versus

State of Maharashtra & Ors. .. Respondents

None for the petitioner

Mr.P.P.Chavan with Mr.Kiran Gandhi i/b M/s.Little & Co. for respondent no.4 and 5

Mr.P.M.Patil, A.G.P. for respondent no.1 to 3

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 31ST AUGUST, 2004

ORAL JUDGMENT (PER S.U.KAMDAR, J.):

1. In the present petition, a retrospective levy of electricity duty is challenged by the petitioner in the light of revised circular issued by the M.S.E.B. withdrawing the concession granted to the poultry business. Some of the material facts in the present case are briefly stated as under:

2. The petitioner is inter alia carrying on business of poultry farming located at Gat No.405/406, Deulgaongada, Post Kedgaon, Taluka Dound, Dist.Pune.

3. In 1988, the M.S.E.B. pursuant to a directive from the State Government issued a Circular bearing No.442 dated 7th November, 1988 which provided that a concessional rate of Rs.0.16 paise per unit would be charged to all poultry farms with effect from August, 1988. By Circular No. 443 dated 28th November, 1988, the M.S.E.B. further clarified that the concessional rate would be applicable even to the poultry farms using High Tension electricity. By Circular No.447 dated 21st February, 1989, the M.S.E.B. provided that concessional rate of Rs.0.16 per unit would be applicable to poultry farms using both High Tension and Low Tension energy. By issuing Circular No.451 dated 12th June, 1989 the M.S.E.B. clarified that Circular Nos.442 and 443 would apply to all types of poultry loads. There is no dispute that the petitioners paid the electricity charges at the

rate of Rs.0.16 paise per unit in accordance with the said circulars.

4. By circular No.480 dated 27th August, 1991 the tariff rate levied on poultry farming came to be revised. However, the M.S.E.B. continued to charge uniform rate for all the poultry activities. Thereafter the impugned Circular No.134 came to be issued on 3rd October, 1991 stating that the concessional tariff was applicable only to poultry farming and other related activities not to poultry breeding, hatcheries nor for other activities relating to poultry. This was followed by Circular No.510 dated 22nd January, 1983 by which it was reiterated that concessional rate of Rs.0.50 paise per unit was applicable to poultry farming i.e. activities of layers and broilers and not applicable to other activities of poultry like hatcheries etc. It appears that these two circulars came to be issued pursuant to a clarification made by the State Government that the concessional rate of tariff which was granted earlier was withdrawn with retrospective effect.

According to the State Government the said facility was not pertaining to hatcheries and poultry breeding centres. It appears that on the basis of these circulars the M.S.E.B. some time in the year 1993 sent bills for differential duty for a period between August, 1988 and November, 1991 stating that the concerned farms are not eligible for concessional poultry tariff and it is withdrawn with retrospective effect. This levy with retrospective effect is challenged by the above 9 petitions.

5. The only question that falls for consideration is whether the M.S.E.B. was right in directing recovery of the differential duty between August, 1988 to November, 1991. It is not disputed before us that under Circular Nos.442 and 443 the concessional rate was made applicable even to poultry farms using High Tension Electricity. By Circular No.451 it was clarified that the concessional rate applies to all types of poultry loads. All along the petitioners paid the electricity charges at the concessional rates.

6. The aforesaid issue raised in the present petition is already decided by us in Writ Petition No.3889 of 1992 and in companion writ petitions. In the light of the said view, we have taken the present petition also partly succeeds and M.S.E.B. is directed to refund the differential amount of duty recovered from the petitioner in respect of period prior to November 1991 within a period of 8 weeks. If the amount is not refunded within the aforesaid period, the M.S.E.B. will be liable to pay interest @ 12% p.a.

Parties to act on a copy of this order duly authenticated by the Court Stenographer.